

AMENDED IN ASSEMBLY JANUARY 13, 2010

AMENDED IN ASSEMBLY JANUARY 4, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1491

Introduced by Assembly Member V. Manuel Perez

February 27, 2009

An act to ~~amend Section 318 of~~ *add Section 318.1* to the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1491, as amended, V. Manuel Perez. Corporations: boards of directors: diversity.

Under existing law, the Secretary of State, or the University of California campus or the California State University campus to which the Secretary of State delegates the authority, maintains a registry of distinguished women and minorities who are available to serve on corporate boards of directors. Existing law authorizes this information to be made available to a person or entity that provides database access or search services, as specified. ~~This bill would authorize that information to be made available to a person or entity that provides those services only if the registrant agrees. The bill would also acknowledge that the Secretary of State transferred the authority and duty to maintain the registry to California State University, Fullerton, in January 1999.~~ Existing law requires the Secretary of State, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, to fix fees for registering with the registry, to report, at least once every 3 years, to the Legislature on the registry's effectiveness, and to take other actions.

~~This bill would instead require the Secretary of State to consult with the relevant Senate and Assembly committees in taking those actions.~~

This bill would set forth the background and history of the registry, including that it was transferred by the Secretary of State to California State University, Fullerton, which maintained the registry from 1999 to 2002. The bill would also require the Secretary of State to thoroughly investigate the present operational status of the registry, including attempting to determine the extent of use of the registry while maintained by the campus, why the campus discontinued maintaining the registry, what has become of the registry, and how might the registry most effectively be restored.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 318.1 is added to the Corporations Code,
2 to read:
3 318.1. (a) The Legislature finds and declares the following:
4 (1) Section 318 of the Corporations Code, as originally enacted,
5 required the Secretary of State to develop and maintain a
6 fee-based, self-supporting registry of distinguished women and
7 minorities who are available to serve on corporate boards of
8 directors. The Secretary of State was authorized to charge fees to
9 persons who wished to be included in the registry and to persons
10 or entities who sought access to the registry for the purpose of
11 identifying qualified women and minorities as candidates for
12 appointment or election to corporate boards of directors.
13 (2) In 1998, the statute providing for the registry was amended
14 to require the Secretary of State to notify the campuses of the
15 University of California and the California State University of the
16 opportunity for one of them to maintain the registry. If more than
17 one campus expressed interest in maintaining the registry, the
18 Secretary of State would have been required to select a campus
19 based on a competitive selection process. If a campus was selected,
20 the Secretary of State was to transfer the information maintained
21 in the registry, at no cost, to the campus. The selected campus
22 would then be required to maintain the registry in a manner
23 consistent with the statute.

(3) In 1999, the Secretary of State transferred the authority and duty to maintain the registry to California State University, Fullerton. That campus operated the registry until 2002. Neither that campus nor the Secretary of State presently operates the registry.

(b) The Secretary of State shall conduct a thorough investigation into the present operational status of the registry. The Secretary of State shall report the findings of the investigation to the respective chairpersons of the Assembly Committee on Judiciary, the Assembly Committee on Jobs, Economic Development, and the Economy, and the Senate Committee on Judiciary. At a minimum, the Secretary of State's investigation shall attempt to determine the following:

(1) How many individuals and entities paid fees to the registry for its services while the registry was in operation at California State University, Fullerton, from 1999 to 2002?

(2) Why did that campus discontinue maintaining the registry in 2002?

(3) What became of the registry database and fees that had been collected from registrants or persons or entities seeking access to the registry?

(4) How might the registry most effectively be restored in a manner that effectuates the Legislature's original intent in enacting Section 318 of the Corporations Code?

~~SECTION 1. Section 318 of the Corporations Code is amended to read:~~

~~318. (a) The Secretary of State shall develop and maintain a registry of distinguished women and minorities who are available to serve on corporate boards of directors. As used in this section, "minority" means an ethnic person of color including American Indians, Asians (including, but not limited to, Chinese, Japanese, Koreans, Pacific Islanders, Samoans, and Southeast Asians), Blacks, Filipinos, and Hispanics.~~

~~(b) For each woman or minority who participates in the registry, the Secretary of State shall maintain information on his or her educational, professional, community service, and corporate governance background. That information may include, but is not limited to:~~

~~(1) Paid or volunteer employment.~~

~~(2) Service in elected public office or on public boards or commissions.~~

~~(3) Directorships, officerships, and trusteeships of business and nonprofit entities, including committee experience.~~

~~(4) Professional, academic, or community awards or honors.~~

~~(5) Publications.~~

~~(6) Government relations experience.~~

~~(7) Experience with corporate constituents.~~

~~(8) Any other areas of special expertise.~~

~~(c) In addition to the information subdivision (b) requires, each woman or minority who participates in the registry may disclose any number of personal attributes that may contribute to board diversity. Those attributes may include, but are not limited to, gender, physical disability, race, or ethnic origin.~~

~~(d) In addition to the information subdivision (b) requires, each woman or minority who participates in the registry may indicate characteristics of corporations for which he or she would consider, or is especially interested in, serving as a director. These characteristics may include, but are not limited to, company size, industry, geographic location, board meeting frequency, director time commitments, director compensation, director insurance or indemnification, or social policy concerns.~~

~~(e) Any woman or minority may nominate himself or herself to the registry by filing with the Secretary of State the information required by subdivision (b) on a form the secretary prescribes. Any registrant may attach a copy of his or her resume and up to two letters of recommendation to his or her registration form. Each registrant's registration form, together with any attached resume or letters of recommendation, shall constitute his or her registry transcript.~~

~~(f) The Secretary of State shall make appropriate rules requiring registrants to renew or update their filings with the registry, as necessary to ensure continued accuracy of registry information.~~

~~(g) The Secretary of State shall assign each registrant a file number, then enter the information described in subdivisions (b), (c), and (d) into a data base, using the registrant's file number to identify him or her. The registry data base shall not disclose any registrant's name or street address, but may list the city, county, or ZIP Code of his or her business or residence address. The secretary shall make data base information available to those~~

1 persons described in subdivisions (i) and (j). The secretary may
2 provide that access either by permitting direct data base searches
3 or by performing data base searches on written request.

4 (h) The Secretary of State may, to the extent the registrant has
5 agreed, also make information contained in the registry data base
6 available to any person or entity qualified to transact business in
7 California that regularly engages in the business of providing data
8 base access or search services; provided, that data base access will
9 not be construed to entitle the user to access to any registrant's
10 transcript.

11 (i) The Secretary of State shall make information contained in
12 a reasonable number of registrants' transcripts available to any
13 corporation or its representative. A "representative", for purposes
14 of this subdivision, may be an attorney, an accountant, or a retained
15 executive recruiter. A "retained executive recruiter", for purposes
16 of this subdivision, is an individual or business entity engaged in
17 the executive search business that is regularly retained to locate
18 qualified candidates for appointment or election as corporate
19 directors or executive officers.

20 (j) The Secretary of State may also grant access to a reasonable
21 number of registrants' transcripts to any other person who
22 demonstrates to the secretary's satisfaction that the person does
23 both of the following:

24 (1) Seeks access to the registry in connection with an actual
25 search for a corporate director.

26 (2) Intends to use any information obtained from the registry
27 only for the purpose of finding qualified candidates for an open
28 position on a corporate board of directors.

29 (k) The Secretary of State may employ reasonable means to
30 verify that any party seeking access to registry transcript
31 information is one of those specified in subdivision (i) or (j). To
32 that end, the secretary may require a representative to identify its
33 principal, but may not disclose that principal's identity to any other
34 person.

35 (l) Upon written request specifying the registrant's file number,
36 the Secretary of State shall provide any party entitled to access to
37 registry transcripts with a copy of any registrant's transcript. The
38 secretary may by rule or regulation specify other reasonable means
39 by which persons entitled thereto may order copies of registrants'
40 transcripts.

1 (m) ~~Notwithstanding any other provision of law, no person shall~~
2 ~~be entitled to access to information the registry contains, except~~
3 ~~as this section specifically provides.~~

4 (n) ~~The Secretary of State shall charge fees for registering with~~
5 ~~the registry, obtaining access to the registry data base, and~~
6 ~~obtaining copies of registrants' transcripts. The Secretary of State,~~
7 ~~in consultation with the relevant Senate and Assembly committees,~~
8 ~~shall fix those fees by regulation. Fees shall be fixed so that the~~
9 ~~aggregate amount of all fees collected shall be sufficient to cover~~
10 ~~the total cost of administering the registry program. Registration~~
11 ~~fees shall be fixed so as to encourage qualified women and~~
12 ~~minorities to participate. Fees shall be deposited into the Secretary~~
13 ~~of State's Business Fee Fund.~~

14 (o) ~~The Secretary of State may make any rule, regulation,~~
15 ~~guideline, or agreement the secretary deems necessary to carry out~~
16 ~~the purposes and provisions of this section.~~

17 (p) ~~The Secretary of State may cooperate with the California~~
18 ~~Commission on the Status of Women, the California Council to~~
19 ~~Promote Business Ownership by Women, the relevant Senate and~~
20 ~~Assembly committees, women's organizations, minority~~
21 ~~organizations, business and professional organizations, and any~~
22 ~~other individual or entity the secretary deems appropriate, for any~~
23 ~~of the following purposes:~~

24 (1) ~~Promoting corporate use of the registry.~~

25 (2) ~~Locating qualified women and minorities and encouraging~~
26 ~~them to participate in the registry.~~

27 (3) ~~Educating interested parties on the purpose and most~~
28 ~~effective use of the registry.~~

29 ~~The secretary may also prepare and distribute publications~~
30 ~~designed to promote informed use of the registry.~~

31 (q) ~~The Secretary of State may seek registrants' consent to be~~
32 ~~listed in a published directory of women and minorities eligible~~
33 ~~to serve as corporate directors, which will contain a summary of~~
34 ~~each listed registrant's qualifications. The secretary may~~
35 ~~periodically publish, or cause to be published, such a directory.~~
36 ~~Only those registrants who so consent in writing may be included~~
37 ~~in the directory. The printed directory shall be provided to any~~
38 ~~person upon payment of a fee, which the Secretary of State will~~
39 ~~determine by regulation, in consultation with the relevant Senate~~
40 ~~and Assembly committees.~~

1 ~~(r) The Secretary of State shall implement this section no later~~
2 ~~than January 1, 1995.~~

3 ~~(s) At least once in each three-year period during which the~~
4 ~~registry is available for corporate use, the Secretary of State, in~~
5 ~~consultation with the relevant Senate and Assembly committees,~~
6 ~~shall report to the Legislature on the extent to which the registry~~
7 ~~has helped women and minorities progress toward achieving parity~~
8 ~~in corporate board appointments or elections.~~

9 ~~(t) (1) The Secretary of State shall notify each University of~~
10 ~~California campus and each California State University campus~~
11 ~~of the opportunity to maintain the registry created pursuant to this~~
12 ~~section. If more than one campus of the university or state~~
13 ~~university expresses interest in maintaining the registry, the~~
14 ~~Secretary of State shall select a campus based on a competitive~~
15 ~~selection process. If a campus is selected, the Secretary of State~~
16 ~~shall transfer the information contained in the registry, free of cost,~~
17 ~~to that campus. Any University of California or California State~~
18 ~~University campus selected to maintain the registry shall do so in~~
19 ~~a manner consistent with this section. Funds deposited in the~~
20 ~~Secretary of State's Business Fees Fund pursuant to this section~~
21 ~~shall be transferred to the university selected to maintain the~~
22 ~~registry, and shall be used to administer the registry program. The~~
23 ~~Secretary of State shall maintain the registry until a University of~~
24 ~~California or California State University campus agrees to do so.~~

25 ~~(2) The Legislature recognizes that in January 1999, the~~
26 ~~Secretary of State transferred the authority and duty to maintain~~
27 ~~the registry, and all materials associated with the registry, to~~
28 ~~California State University, Fullerton.~~